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No. 90-758

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

DAVID ENIX, JAMES MEHAFFIE, DAVID MEHAFFIE,
DOUGLAS SAPP, KYM MEHAFFIE and H. F. PERKINS,
Petitioners,

v.

THE DAYTON WOMEN'S HEALTH CENTER, INC.,
K. W. DAVIS, M.D., and ROBERT SKIPTON, M.D.,
Respondents.

**BRIEF IN OPPOSITION TO A PETITION
FOR A WRIT OF CERTIORARI**

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QUESTIONS PRESENTED

1. Whether the trial court may certify a case as a defendant class action when the named defendants are representative of the defendant class and when all the certification requirements of Ohio Civil Rule 23 are satisfied.
2. Whether the trial court may enter a permanent injunction which places reasonable time, place and manner restrictions on the petitioners' picketing activities which are content neutral, narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels of communication.



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AMERICAN MEDICAL ASSOCIATION
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SPECIAL COURSE OF THE UNITED STATES
OF MEDICINE
AND SURGERY
AT THE UNIVERSITY OF CHICAGO

The American Medical Association has the honor to announce that it has been decided to hold a special course of the United States of Medicine and Surgery at the University of Chicago. The course will be held during the month of June, 1911, and will consist of a series of lectures and demonstrations on the subjects of internal medicine, surgery, and obstetrics. The course will be held at the University of Chicago, and will be open to all physicians and surgeons who are interested in the study of these subjects. The course will be held at the University of Chicago, and will be open to all physicians and surgeons who are interested in the study of these subjects. The course will be held at the University of Chicago, and will be open to all physicians and surgeons who are interested in the study of these subjects.

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**CONSTITUTIONAL PROVISIONS AND STATUTES
INVOLVED**

In addition to the First Amendment issues identified in the petitioners' writ of certiorari, this case arises out of an interpretation of Rules 23(A) and 23(B) of the Ohio Rules of Civil Procedure, which provide:

(A) **Prerequisites to a Class Action.** One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(B) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (A) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or

(b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (a) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (d) the difficulties likely to be encountered in the management of a class action.

STATEMENT OF THE CASE

A. Procedural Posture

The long procedural history of this case commenced with the respondents' filing of a complaint for a preliminary and permanent injunction on October 14, 1986. At that time, the respondents also moved to have the case certified as a defendant class action.

The petitioners responded to the allegations contained in the respondents' complaint and the trial court scheduled an evidentiary hearing on December 4, 1986. On January 15, 1987, following three days of extensive testimony and the filing of post-trial briefs, the trial court certified a defendant class and entered a preliminary injunction.

Following the entry of a preliminary injunction, the petitioners continued to engage in the type of conduct which necessitated the filing of this lawsuit in the first instance. Their protesting activities spread to the homes of the clinic's physicians and employees. In response to their conduct and after another evidentiary hearing, the trial court supplemented and modified its original injunctive order by adding additional restrictions on the number of permissible protestors and the locations where protesting activity could be conducted. On July 10, 1987, based on the evidence submitted at the previous evidentiary hearings, the trial court permanently enjoined the defendants and defendant class in accordance with the previous orders of the court. *Dayton Women's Health Center v. Enix*, Case No. 86-3120 (Montgomery Cty. C.P. July 10, 1987) (attached to petitioners' appendix.)

An appeal of the permanent injunction was taken to the Court of Appeals of Montgomery County, Ohio. On December 5, 1988, the court affirmed virtually every aspect of the trial court's permanent injunction, with the exception of the restriction prohibiting the petitioners and the class from verbally communicating with employees of the Dayton Women's Health Center without their consent, and the pro-

hibition concerning residential picketing. In addition, the Montgomery County Court of Appeals modified a provision of the permanent injunction relating to the acceptable noise level of the petitioners' activities at the clinic. *Dayton Women's Health Center v. Enix*, Case No. 10579 (Montgomery Cty. C.A. December 5, 1988) (attached to petitioners' appendix.)

The court of appeals' decision concerning the appealability of a class certification order conflicted with a decision of another court of appeals in Ohio, so the case was certified to the Supreme Court of Ohio for review and final determination. Although the case was certified to the Ohio Supreme Court as to the issue of whether an order certifying the case as a defendant class action was a final appealable order, the petitioners brought before the state supreme court all of the issues relating to the propriety of the trial court's class certification order and the scope of the trial court's injunction. The decision of the court of appeals was affirmed on June 20, 1990. *Dayton Women's Health Center v. Enix*, 52 Ohio St. 3d 67, 555 N.E. 2d, 956, *reh. den.*, 53 Ohio St. 3d 706, 558 N.E.2d 61 (1990).

B. Statement of Facts

Both the scope of the injunction and the order certifying a defendant class arose out of a specific set of circumstances detailed in the 814-page trial transcript. The summary of facts outlined by the petitioners does not begin to depict the egregious conduct of the petitioners and defendant class members revealed and documented at the evidentiary hearing.

The Dayton Women's Health Center, Inc., is a non-profit corporation located at 3460 South Dixie Drive, Dayton, Ohio. The center provides a full range of reproductive health care services, including pregnancy tests, pelvic examinations, medical evaluations, and early pregnancy termination. K. W. Davis, M.D., and Robert Skipton, M.D., are medical doctors, licensed to practice medicine in the state of Ohio. The

doctors work at the Dayton Women's Health Center and operate a private practice.

While the Dayton Women's Health Center has often been the site of some peaceful picketing activity, the picketing and protesting activity began to escalate in June 1986. Since that time, the number of picketers progressively increased, their picket signs enlarged, the noise level at the clinic rose, and the persons either working at the clinic or seeking medical services there began to get harassed by members of the defendant class. Additionally, picketers began trespassing and putting literature on cars. What began as peaceful picketing on the grounds of the Center, ultimately got out of control forcing the plaintiffs to file their suit for injunctive relief.

Prior to the filing of the plaintiffs' complaint, the number of protestors at the Dayton Women's Health Center varied. There were occasions when as many as 70 picketers demonstrated at the clinic. On at least one occasion since the complaint was filed, there were 200-300 picketers present. Because of the large number of protestors, it was impractical to join everyone as individual defendants; therefore, the case was submitted to the trial court as a defendant class action. Named as defendants and representatives of the class were: David Enix, Jim Mehaffie, David Mehaffie, Douglas Sapp, Kym Mehaffie and H. F. Perkins. The named defendants were representative of the defendant class and their conduct at the clinic represented the conduct of all class members which the plaintiffs sought to enjoin.

The record in this case is replete with testimony that the named defendants formed the core group of individuals protesting the activities of the Dayton Women's Health Center with the other class members acting in concert and cooperation with them. Indeed, two of the named defendants, Kym Mehaffie and David Enix, were listed in literature as the persons to contact to obtain information concerning picketing activities at the Dayton Women's Health Center. The named defendants supplied picket signs for themselves and the other class members picketing at the clinic. Furthermore, after the

court issued its preliminary injunction, certified the defendant class, and established a procedure for adding additional class members, it was the named defendants who instructed picketers that they need not accept service of the injunction when attempts were made to serve them.

The voluminous transcript in this case graphically demonstrates instances of intimidating and harassing conduct directed at the Center's employees and patients by the named defendants and the defendant class. The picketers have caused traffic problems, regularly trespassed on the property of the Center, and routinely blocked the Center's ingress and egress. Their conduct forced the facility to close on at least three occasions. On a daily basis the picketers have subjected the patients and staff of the clinic to verbal harassment, threats, and intimidation. The abusive, threatening, and intimidating nature of the defendants' conduct has been alarming and frightening to the clinic's staff and patients. The constant and chronic screaming and chanting by the defendants is so loud that it can be heard inside the facility.

The employees of the Dayton Women's Health Center and the patients are referred to as "scum", "murderers" and "killers". On one occasion, a bomb threat was phoned into the clinic and a rock was thrown through the clinic's window. The clinic and the homes of Drs. Skipton and Davis are subjected to harassing and unidentified telephone calls. The homes of Drs. Davis and Skipton, and the homes of other clinic employees, have been the site of active protest activities by the defendants. Reportedly, the defendant Enix followed one of the clinic's employees out of the clinic in his car and screamed that she was a disgrace to her family and profession.

Not surprisingly, the defendants' abusive, harassing, and intimidating conduct has caused the Dayton Women's Health Center and the physicians to lose patients. Moreover, the clinic has had difficulty hiring medical personnel to provide health care at the facility. The conduct of the picketers has

been so extreme that one of the clinic's physicians left his practice at the clinic.

The instances of coercion, harassment, and intimidation inflicted by the named petitioners and defendant class members on the employees and patients of the Dayton Women's Health Center are well documented in the 814-page transcript. Their activities have adversely affected the physical well being of the patients of the clinic and have irreparably harmed the lawful business conducted at the clinic. It was based on those facts that the case was presented to the trial court on the plaintiffs' motion for a preliminary and permanent injunction, and that the permanent injunction, as set forth above, was entered by the trial court.

ARGUMENT

1. The trial court may certify a case as a defendant class action when the named defendants are representative of the defendant class and all of the certification requirements of Ohio Civil Rule 23 are satisfied.

Throughout the entire history of this lawsuit, the petitioners have contended that the trial court's class certification order was improper because it punishes persons acting independently of the parties without giving them their day in court. In making this argument, the petitioners casually and conveniently ignore the evidence produced at trial which demonstrates that the class representatives actively coordinate the demonstrations at the Dayton Women's Health Center, and that the class members are acting in concert and combination with the named defendants. The evidence conclusively showed that the named defendants constituted the core group of protestors that actively solicited and coordinated the protests at the clinic.

The petitioners' arguments also ignore the concept of a defendant class and deny the power of an equity court to place reasonable restrictions on conduct which infringes the constitutional and common law rights of others. Binding class members in the manner contemplated by the trial court's order is precisely the same as binding new class members in any case where future membership is anticipated. The defendant class in this case is analogous to any labor union or concerted activity where future membership is anticipated. It does not run afoul of any constitutional principles. *Planned Parenthood v. Project Jericho*, 52 Ohio St. 3d 56, 556 N.E.2d 157 (1990).

The defendant class action was a necessity in this case because a simple injunction against the named defendants would not have provided the respondents with any meaningful relief because the enjoined conduct would simply be carried on by others whose names were unknown to the respondents, but who acted in concert with the named defen-

dants. The respondents needed injunctive relief that would reach the harassment of the staff and the patients at the Dayton Women's Health Center by the named defendants and by those not named as defendants, but engaging in similar conduct outside of the facility. The appellants have consistently suggested that the respondents should be required to file separate lawsuits against each individual picketer. Such an approach would result in enumerable, duplicative suits, resolving the same factual and legal issues. To avoid protracted and duplicative litigation for equitable relief, the only logical and efficient way to proceed in this case was to certify the defendant class of picketers and protestors who would be bound by the orders of the trial court.

In Ohio, the decision of whether or not to certify a class rests within the sound discretion of the trial court.

Furthermore, while a trial court's determination concerning class certification is subject to appellate review on an abuse-of-discretion standard, due deference must be given to the trial court's decision. A trial court which routinely handles case management problems, is in the best position to analyze the difficulties which can be anticipated in litigation of class actions. It is at the trial court level that decisions as to class definition and the scope of questions to be treated as class issues should be made.

Marks v. C.P. Chemical Co., 31 Ohio St. 3d 200, 201, 509 N.E. 2d 1249 (1987).

Furthermore, a trial court has broad discretion in determining whether a class action may be maintained, and "that determination will not be disturbed absent a showing of an abuse of discretion." *Planned Parenthood v. Project Jericho*, 52 Ohio St. 3d at 62; *see also*, *Schmidt v. Avco Corp.*, 15 Ohio St. 3d 310, 312-13, 473 N.E. 2d 822 (1984). An "abuse of discretion" is "more than an error of law or judgment; it implies an attitude on the part of the trial court that is unrea-

sonable, arbitrary, or unconscionable." *Marks v. C.P. Chemical Co.*, 31 Ohio St. 3d at 201, citing, *Ojalvo v. Board of Trustees of Ohio State Univ.*, 12 Ohio St. 3d 230, 232, 466 N.E. 2d 875 (1984).

The decision to certify a defendant class in this case was an extremely fact sensitive issue. The court heard evidence for three days, examined the evidence in light of the requirements of Rule 23 of the Ohio Rules of Civil Procedure and, finding all of the requirements of Rule 23 satisfied, certified a defendant class. Nothing in the trial court's order can be said to have been an abuse of discretion. Indeed, the very wording of Ohio Civil Rule 23 indicates that the rule anticipates both plaintiff and defendant class actions. The first sentence of the rule states that "one or more members of a class may sue *or be sued* as representative parties . . ." (emphasis added). In fact, defendant classes have been recognized and accepted in both federal and state courts. *Planned Parenthood v. Project Jericho*, 52 Ohio St. 3d at 62; see, *Riley v. Kessler*, 2 Ohio Misc. 2d 4, 441 N.E. 2d 638 (Lucas Cty. 1982); *Guy v. Abdulla*, 57 F.R.D. 14 (N.D. Ohio 1972).

The arguments made by the petitioners are simply not supported by the facts on which the trial court based its order. No one is bound by the trial court's injunction until he has been personally served with a copy of the order. The order does not implicate any constitutional rights of the petitioners. If anyone feels that he or she has a unique defense in this case, the Ohio Supreme Court has assured them that those defenses can be raised after the class is certified. *Planned Parenthood v. Project Jericho*, 52 Ohio St. 3d at 65.

2. The trial court may enter a permanent injunction which places reasonable time, place and manner restrictions on the petitioners' picketing activity which are content neutral, narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels of communication.

Although the constitutions of the United States and the State of Ohio offer some protection to an individual's right of free speech and assembly, that right is not absolute.

The rights of free speech and assembly, while fundamental in our democratic society, do not mean everyone with opinions or beliefs to express may (speak) at any public place at any time. The constitutional guarantee of liberty implies the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of anarchy. . . . We emphatically reject the notion urged by appellant that the First and Fourteenth Amendments afford the same kind of freedom to those who would communicate ideas by conduct such as patrolling, marching, and picketing on the streets and highways as these amendments afford to those who communicate ideas by pure speech.

Cox v. Louisiana, 379 U.S. 536, 554-55, 85 S. Ct. 453, 13 L. Ed. 2d 471 (1965).

The rights of the petitioners were not the only rights adjudicated in this case. The primary issue before the trial court involved the balancing of the rights of the Dayton Women's Health Center, its employees and the general public to unimpeded access to medical care and the constitutional right to privacy associated with a woman's choice to terminate her pregnancy on one side of the scale, with the rights of the picketers and protestors to free speech and assembly on the other side of the scale.

Although peaceful picketing and leafleting are expressive speech and are afforded some protection by the First Amend-

ment, the First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner which may be desired. *Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 101 S. Ct. 2559, 69 L. Ed. 2d 298 (1981). The states may impose reasonable time, place and manner restrictions upon all forms of expression as long as they are content neutral, narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels of communication. *United States v. Grace*, 461 U.S. 171, 177, 103 S. Ct. 1702, 75 L. Ed. 2d 736 (1983); *Perry Educ. Ass'n. v. Perry Local Educators' Ass'n.*, 460 U.S. 37, 45, 103 S. Ct. 948, 74 L. Ed. 2d 794 (1983).

While the petitioners have paid lip service to the notion that an Ohio court may impose some restrictions on their activities, their argument throughout the history of this litigation has been that they are guaranteed the unrestrained freedom to picket and protest whenever, however, and wherever they choose. Their arguments concerning the constitutionality of the permanent injunction fails to acknowledge the elementary and easily grasped distinction between speech and speaker. The injunction places reasonable restrictions on the conduct of the speaker without effecting the content of their speech. The injunction is clearly within the constitutional parameters.

Courts in Ohio and all over the country are using their equitable power to limit picketing activities in clinic harassment cases such as this. *Planned Parenthood v. Project Jericho*, 52 Ohio St. 3d 57 (1990); *Fairfield Commons Condominium Ass'n. v. Stasa*, 30 Ohio App. 3d 11, 506 N.E.2d 237 (Lucas Cty. 1985), *cert. denied*, *Moriarty v. Fairfield Commons Condominium Ass'n*, 479 U.S. 1055, 107 S. Ct. 930, 93 L. Ed. 2d 981 (1987); *Bering v. Share*, 106 Wash. 2d 212, 721 P.2d 918 (1986), *cert. dismissed*, 479 U.S. 1050, 107 S. Ct. 940, 93 L. Ed. 2d 990 (1987); *Planned Parenthood of Monmouth Cty., Inc. v. Cannizzaro*, 204 N.J. Super. 531,

499 A.2d 535 (1985), *aff'd*, 217 N.J. Super. 623, 526 A.2d 741 (1987). While the petitioners may believe that they should have the unrestricted right to torment and harass individuals and businesses engaged in lawful conduct, state courts have the authority and duty to protect the competing constitutional and common law rights of others. Picketing injunctions necessarily are prospective in nature and set guidelines for conduct based on tortious acts committed in the past.

The scope of the permanent injunction is simply a reflection of the facts introduced into evidence at trial. Notwithstanding their religious and moral convictions, the conduct of the petitioners went beyond the realm of protected free speech and became an abusive vehicle for harassing, intimidating, and coercing the staff, physicians and patients of the Dayton Women's Health Center. It is precisely this type of abusive conduct which the courts are empowered to enjoin through reasonable time, place and manner restrictions. *Bering v. Share*, 721 P.2d 918 (Wash. 1986); *Parkmed Company v. Pro-Life Counseling, Inc.*, 442 N.Y.S. 2d 396, 110 Misc. 2d 369 (Sup. Ct., N.Y. 1981), *modified*, 457 N.Y.S. 2d 27, 91 A.D. 2d 551 (App. Div. 1982); *Planned Parenthood of Monmouth Cty., Inc. v. Cannizzaro*, 204 N.J. Super. 531; *Planned Parenthood v. Project Jericho*, 52 Ohio St. 3d 56. All of the restrictions contained in the permanent injunction were designed to control, not eliminate, the petitioners' conduct, in a manner which would also permit the Dayton Women's Health Center and its patients and employees to engage in their constitutionally protected activities. The permanent injunction did not foreclose the petitioners' rights of speech, but merely restricted their activities in a constitutionally permissible manner.

The permanent injunction in this case was designed to protect significant governmental interests. It is well established that the states have a substantial interest in keeping streets and sidewalks open and available for the movement of people and property and in protecting the safety and convenience of

persons using public and private facilities. *Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. at 649-59; see also, *Cox v. Louisiana*, 379 U.S. 559 (1965); *Cox v. New Hampshire*, 312 U.S. 569, 61 S. Ct. 762, 85 L. Ed. 1049 (1941). Limiting the number of protestors parading on the sidewalk in front of the clinic is a narrowly tailored means of protecting this interest. Likewise, states have a significant and substantial interest in insuring its citizens' unimpeded access to medical care. *Bering v. Share*, 721 P.2d at 927. Limiting the protest activity to the sidewalk and restricting the petitioners from blocking the ingress and egress of the clinic are narrow restrictions designed to protect that interest. The state also has a significant interest in protecting the right of privacy of women going to the Dayton Women's Health Center and in reducing the coercive impact of picketing on the staff and patients at the Center. Restrictions on the number and location of the picketers and the noise level of their activities are narrowly tailored restrictions which protect this interest.

This Court has regularly rejected the assertion that people who wish to "propagandize protests or views have a constitutional right to do so whenever, however and wherever they please." *United States v. Grace*, 461 U.S. 171, 177-78, 103 S. Ct. 1702, 75 L. Ed. 2d 736 (1983). A person's right of privacy also protects the means available to effectuate a decision to have an abortion and the physician's right to perform legal abortions without coercive outside restraints. See generally, *Whalen v. Roe*, 429 U.S. 589, 97 S. Ct. 869, 51 L. Ed. 2d 64 (1977); *Nyberg v. Virginia*, 495 F.2d 1342 (8th Cir.), cert. denied, 419 U.S. 891, 95 S. Ct. 169, 42 L. Ed. 2d 136 (1974). The testimony in this case conclusively established that the destructive conduct of the picketers caused emotional distress on both the patients and the staff of the Dayton Women's Health Center. The insensitivity of the petitioners' conduct coupled with the insecurity of a woman about to undergo an abortion could have harmful medical consequences. *American College of Obstetricians and Gynecologists v. Thornburgh*, 613 F. Supp. 656, 666 (E.D. Pa. 1985).

The injunction is content neutral and is based on content neutral findings of fact. The trial court properly refused to restrict the content of the petitioners' speech. The injunction was narrowly tailored and only limited the number of picketers, the location of picketing, and the manner of their demonstrations. The petitioners' conduct had given rise to a clear and present danger to patients and physicians and their conduct was incompatible with the character and function of the medical building. *See, Grayned v. Rockford*, 408 U.S. 104, 116, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972). The restrictions on the numbers of picketers allowed in proximity of the Dayton Women's Health Center and the extent of the conduct which they were permitted to pursue were limited without regard to the message they were trying to convey. The place restriction was designed to prevent the picketers from blocking the ingress to and egress from the Center and from trespassing. It also sought to control the aggressive, disorderly and coercive nature of the petitioners' activities which caused significant mental and emotional trauma to both the employees and the patients of the Center, as well as the significant business disruption which the petitioners caused.

The injunction is not only content neutral but narrowly tailored to serve the state's significant interests without unduly limiting the petitioners' activities. The injunction does not foreclose alternative channels of communication. It allows the petitioners to convey their beliefs by means of pickets and also allows them to speak with anyone they choose. In addition to being able to express their opinions at the Dayton Women's Health Center and the offices of the physicians, the petitioners are free to voice their opinions and concerns in any other part of the city of Dayton, state of Ohio, or the United States.

The evidence in this case was more than sufficient to enable the court to conclude that injunctive relief was necessary. The petitioners' conduct caused irreparable harm to the clinic and numerous patients who have been subjected

to their constant and relentless harassment. It was the cumulative effect of the petitioners' conduct which necessitated the relief granted by the trial court. The findings of the trial court were supported by competent evidence. The injunction, as modified by the Montgomery County Court of Appeals, fits safely within constitutional parameters and is consistent with the injunctions entered by other Ohio courts, as well as courts nationwide facing similar problems. The provisions of the injunction and its restrictions are clear and easily understood by any individual with the ability to read. Any potential ambiguity or dangling thread of uncertainty concerning the scope or the effect of the injunction was eliminated by the Montgomery County Court of Appeals.

CONCLUSION

While the nation may be deeply divided over the issue of abortion, this lawsuit does not involve that issue. The case simply revolves around the power of an equity court to balance competing constitutional interests and to protect its substantial interests in keeping streets and sidewalks open and available for the movement of people and property, protecting the safety and convenience of persons using public and private facilities, and insuring its citizens' unimpeded access to medical care. The permanent injunction balances the petitioners' first amendment rights with the competing constitutional rights of others. The injunction preserves the rights of the petitioners to engage in open and robust debate about any subject they choose. The restrictions imposed by the trial court do not restrict the content of their speech. It simply imposes reasonable time, place and manner restrictions during those times when they are at the Dayton Women's Health Center or the private offices of its physicians. States must be free to protect their own interests and the rights of all its citizens. Any other conclusion could lead states down the path of chaos.

The trial court's injunction and class certification orders were based on the particular facts of this case. Those orders have passed the scrutiny of both the Montgomery County Court of Appeals and the Ohio Supreme Court and should not be the subject of further inquiry by the United States Supreme Court.

The petitioners' writ of certiorari should be denied.

Respectfully submitted,

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